

(3) a reference to the county clerk or registrar of voters is considered to refer to the secretary of the city or town or, if the city or town does not have a secretary, to the person performing the functions of a secretary of the city or town; and

(4) a reference to the county judge is considered to refer to the mayor of the city or town or, if the city or town does not have a mayor, to the presiding officer of the governing body of the city or town.

(c) The city or town shall pay the expense of the election.

SECTION 5. This Act takes effect September 1, 1999.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 7, 1999, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1814 on May 21, 1999, by a non-record vote; passed by the Senate, with amendments, on May 19, 1999, by a viva-voce vote.

Approved June 18, 1999.

Effective September 1, 1999.

CHAPTER 849

H.B. No. 1822

AN ACT

relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 2(7) and (9), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(7) "Air conditioning and refrigeration maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system, commercial refrigeration system or equipment, or process cooling or heating system. The term does not include the installation of a total replacement of the system or the installation or repair of boilers or pressure vessels that must be installed [by licensed persons] pursuant to rules and regulations adopted by the commissioner under Chapter 755, Health and Safety Code.

(9) "Air conditioning and refrigeration contracting" means to perform or offer to perform the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems.

SECTION 2. Section 2, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended by adding Subdivision (14) to read as follows:

(14) "Air conditioning and refrigeration contracting company" means any person, sole proprietorship, corporation, partnership, association, or other business entity that performs or offers to perform air conditioning and refrigeration contracting to the general public.

SECTION 3. Sections 3(b) and (m), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The executive director [commissioner] may issue an emergency order as necessary to enforce this Act if the executive director [commissioner] determines that an emergency exists requiring immediate action to protect the public health and safety. The order may be issued without notice and hearing or with any notice and hearing that the executive director [commissioner] considers practicable under the circumstances. If an emergency order is

issued under this subsection without a hearing, the *executive director* ~~[commissioner]~~ shall set the time and place for a hearing to affirm, modify, or set aside the emergency order. *The executive director may issue cease and desist orders.*

(m) A representative of the *department* ~~[commission]~~ or a municipal air conditioning or refrigeration inspector within the jurisdiction of the municipality may issue a citation to a person who violates Section 10(e) or (f) of this Act.

SECTION 4. Section 3B, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person is exempted under Section 6 of this Act, a person may not perform air conditioning and refrigeration contracting without a license under this Act.

(b) *An air conditioning and refrigeration contracting company must employ full time in each permanent office a license holder whose license is assigned to that company.*

(c) *A municipal or county official may issue a citation to an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting without a license issued under this Act, if the person is not exempt from the provisions of this Act.*

SECTION 5. The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) is amended by adding Section 3C to read as follows:

Sec. 3C. ENFORCEMENT OF CONTRACTS. *An air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting without employing a licensee with the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed. To enforce a contract for the performance of air conditioning and refrigeration contracting, the air conditioning and refrigeration contracting company that performs the services must have been licensed at the time the contract is signed and at the time the work is performed.*

SECTION 6. Sections 4(f) and (g), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(f) The application must be made on a form prescribed by the commissioner and must specify the class of license and each endorsement the applicant seeks. The application must be verified and must be accompanied by:

- (1) ~~[evidence of the insurance coverage required under this Act;~~
- ~~[(2)]~~ a statement of the applicant's practical experience; and
- (2) ~~[(3)]~~ the examination fee.

(g) The *executive director* ~~[commissioner]~~ shall issue an air conditioning and refrigeration contractor license to an applicant who possesses the required qualifications, passes the appropriate examinations, *furnishes evidence of the insurance coverage required under this Act*, and pays the ~~[examination fee and the]~~ original license fee required by this Act. An applicant who fails an examination is eligible for reexamination.

SECTION 7. Section 5(a), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license issued under this Act. The failure to provide proper installation, service, or ~~[and]~~ mechanical integrity under this Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary services, services to be provided, or services that have been provided, or a fraudulent promise made to influence, persuade, or induce an individual to contract for services constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

SECTION 8. Section 6(a), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This Act does not apply to a person who:

- (1) performs air conditioning and refrigeration contracting in a building owned solely by him as his home;

(2) performs air conditioning or refrigeration maintenance work if (i) the person is a maintenance man or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the maintenance work is being performed, (ii) the work is performed in connection with the business in which the person is employed, and (iii) the person and the person's employer referred to in (i) above do not engage in the occupation of air conditioning and refrigeration contracting for the general public;

(3) performs air conditioning and refrigeration contracting and is regularly employed by a regulated electric or gas utility;

(4) is licensed as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), performs work in connection with the business in which the person is employed, and does not engage in the practice of air conditioning and refrigeration contracting for the general public;

(5) performs process cooling or heating work for an industrial operation such as a chemical plant, petrochemical plant, refinery, natural gas plant, or natural gas treating plant when employed by that operation;

(6) performs air conditioning and refrigeration contracting on:

(A) a portable or self-contained ductless air conditioning ~~[or refrigeration]~~ product that has a cooling capacity of three tons or less;

(B) a portable or self-contained heating product that does not require the forced movement of air outside the heating unit; ~~[or]~~

(C) environmental air conditioning equipment that is intended for temporary use and is not fixed in place; or

(D) *residential refrigerators, freezers, and ice machines; or*

(7) performs air conditioning services only on a motor vehicle air conditioning unit or who employs a person who performs air conditioning services only on a motor vehicle air conditioning unit.

SECTION 9. Section 7, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. REPORTING REQUIREMENT. (a) Each person licensed under this Act shall notify the municipal authority who has control of the enforcement of regulations relative to air conditioning and refrigeration contracting in the municipality in which the person is engaged in air conditioning and refrigeration contracting that the person has obtained a state license.

(b) The notification must be in the form required by the municipality.

(c) *The amount of a fee imposed by a municipality on a contractor to provide notice under this section may be set by the municipality only in an amount reasonable and necessary to implement this section.*

SECTION 10. Section 8, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. PENALTY. Except as provided in Section 9, a person commits an offense if the person knowingly or intentionally engages in air conditioning and refrigeration contracting without a license issued under this Act. An offense under this section is a Class C ~~[B]~~ misdemeanor.

SECTION 11. Section 9, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a municipality of this state *that complies with the requirements of this section* is valid under the terms of the license within that municipality. However, a license issued ~~[under this Act]~~ *by the department* is valid throughout the state, and the holder and people under supervision are not required to hold a municipal license to practice air conditioning and refrigeration contracting in any municipality within this state.

(b) *An applicant for a municipal license must:*

(1) *pass an examination that covers the same subjects as the examination required by the commissioner for an air conditioning and refrigeration contractor license of the class of work that the municipal applicant proposes to perform; and*

(2) *meet experience requirements that are at least as strict as those required under Section 4(e) of this Act for an air conditioning and refrigeration contractor license.*

(c) A municipality may by ordinance adopt and enforce standards for air conditioning and refrigeration contractors that are consistent with the standards established under this Act. The municipality shall report violations of the ordinance to the commissioner not later than the 10th day after the date on which the municipality takes action to enforce the ordinance. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 12. Section 10(h), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) A person commits an offense if the person purchases a refrigerant or equipment containing a refrigerant in this state in violation of Subsection (c), (e), or (f) of this section. An offense under this subsection is a Class C [B] misdemeanor.

SECTION 13. Section 10, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended by adding Subsection (j), to read as follows:

(j) *This section does not apply to persons exempt under Section 6(a)(3), (5), or (7) of this Act.*

SECTION 14. (a) The change in law made to Section 8, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 15. (a) Except as provided by Subsection (b) of this section, the change in law made to Section 9, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), by this Act applies to a municipal license that is issued or renewed on or after the effective date of this Act. A municipality subject to that section shall adopt examination requirements in compliance with that section not later than January 1, 2000.

(b) To continue to engage in the practice of air conditioning and refrigeration contracting after September 1, 1999, a person who holds a municipal license on the effective date of this Act must satisfy the examination requirements imposed under Section 9(b), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), as amended by this Act, not later than June 1, 2000.

SECTION 16. (a) This Act takes effect September 1, 1999.

(b) Not later than December 31, 1999, the commissioner of licensing and regulation shall adopt rules as required by Section 3C, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), as added by this Act.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 8, 1999, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1822 on May 21, 1999, by a non-record vote; passed by the Senate, with amendments, on May 19, 1999, by a viva-voce vote.

Approved June 18, 1999.

Effective September 1, 1999.